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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,606	12/17/2003	Robert Scillia	081427-0306175	4067
909	7590	11/02/2004	EXAMINER	
PILLSBURY WINTHROP, LLP			FULTON, CHRISTOPHER W	
P.O. BOX 10500			ART UNIT	
MCLEAN, VA 22102			PAPER NUMBER	
			2859	

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/736,606

Applicant(s)

SCILLIA ET AL.

Examiner

Christopher W. Fulton

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AW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/17/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 8, 9, and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Fuller et al.

The device as claimed is disclosed by Fuller et al with a housing 10 (with gripping depressions) having a chalk port 16 in communication with a chalk reservoir, a movable door 26 to selectively open and close the chalk port, a chalk line support 20 mounted in the housing, a chalk line 12 having one end connected to the chalk line support within the housing and another end with a hook 50 outside the housing with the hook having a body with a line attachment device on one end and a finger 52 extending outwardly from the other end wherein the finger engages a depression 36 during storage of the hook, wherein the chalk line extends through the chalk port, and a retracting mechanism 25 comprising a handle that is storable in a depression in the housing (see figure 3) for storage mounted to the housing and connected to the chalk line that selectively retracts the chalk line into the housing, wherein the exterior surface of the housing includes a side wall with the depression 36 that is shaped to receive the hook for storage, a mouth that is flush with the side wall, and the depression being spaced from the chalk line port about the length of the body of the hook.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Love in view of Fuller et al.

The device as claimed is substantially disclosed by Love with a housing 3 having a chalk port 35 in communication with a chalk reservoir, a chalk line support 9 mounted in the housing, a chalk line 5 having one end connected to the chalk line support within the housing and another end with a hook 13 outside the housing with the hook having a body with a line attachment device on one end and a finger extending outwardly from the other, wherein the chalk line extends through the chalk port, and a retracting mechanism 27 comprising a handle that is storable in a

depression in the housing (see figure 1) for storage mounted to the housing and connected to the chalk line that selectively retracts the chalk line into the housing, wherein the exterior surface of the housing includes a side wall different from the side wall with the chalk port for storing the hook about the length of the body of the hook from the chalk port, but lacks the housing having gripping depressions, the chalk port being covered by a movable door to selectively open and close the chalk port end, the hook storage means having a depression to engage the finger of the hook member during storage of the hook, and the depression having a mouth that is flush with the side wall.

Fuller et al teaches using gripping depressions on the housing to aide in holding the device during use of the device, a movable door 26 to selectively open and close the chalk port to readily insert chalk when needed, a depression 36 to engage the finger of the hook during storage of the hook, the mouth of the depression being flush with the side wall so give the hook member a low profile during storage of the hook. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use gripping depressions on the housing in Love as taught by Fuller et al to aide in holding the device during use of the device. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a movable door 26 to selectively open and close the chalk port in Love as taught by Fuller et al to readily insert chalk when needed. In addition, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a depression 36 to engage the finger of the hook in Love as taught by Fuller et al during storage of the hook with the mouth of the

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depression being flush with the side wall so give the hook member a low profile during storage of the hook.

6. Claims 10, 12, 16, 17, 19-33, 35-38, 40-44, and 45-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller et al in view of Cooper.

The device as claimed is disclosed by Fuller et al as stated in the rejection recited above for claims 1-4, 8, 9, and 13-15, but lack the device having a translucent window (having the depression) to view the chalk inside the housing and a scale on the window to indicate the volume of chalk in the housing.

Cooper teaches using a window 17 to view the inside of the housing. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a window in the housing (door or housing) of Fuller et al as taught by Cooper to view the contents of the housing of Fuller et al to determine when the chalk needs refilled without opening the door.

Official notice is taken that it is old and well known to use a volume scale on a housing to determine the amount of contents the housing contains and to use the various materials claimed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a volume scale on the window of the combination of Fuller et al and Cooper to further quantitatively determine the amount of chalk in the housing. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any of the old and well known materials in chalk tools (plastic, metal, wood...) in the combination of

Fuller et al and Cooper together as common materials with various strengths that are used depending upon the desired characteristic of the device.

7. Claims 11, 16, 32, 34, 36, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Love in view of Fuller et al as applied to claims 5-7 above, and further in view of Cooper.

The device as claimed is disclosed by the combination of Love and Fuller et al combined as stated in the rejection recited above for claims 5-7, but lack the device having a translucent window (having the depression) to view the chalk inside the housing and a scale on the window to indicate the volume of chalk in the housing.

Cooper teaches using a window 17 to view the inside of the housing. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a window in the housing (door or housing) of the combination of Love and Fuller et al together as taught by Cooper to view the contents of the housing of the combination of Love and Fuller et al together to determine when the chalk needs refilled without opening the door.

Official notice is taken that it is old and well known to use a volume scale on a housing to determine the amount of contents the housing contains and to use the various materials claimed. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use a volume scale on the window of the combination of Love, Fuller et al and Cooper to further quantitatively determine the amount of chalk in the housing. Furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use any of the old and well known materials in chalk tools (plastic, metal, wood...) in the

combination of Fuller et al and Cooper together as common materials with various strengths that are used depending upon the desired characteristic of the device.

8. Claims 18 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller et al in view of Cooper as applied to claims 10, 12, 16, 17, 19-33, 35-38, 40-44, and 45-49 above, and further in view of Noyes.

The device as claimed is disclosed by the combination of Fuller et al and Cooper combined as stated in the rejection recited above for claims 10, 12, 16, 17, 19-33, 35-38, 40-44, and 45-49, but lack the device interior being polished to prevent the chalk from sticking.

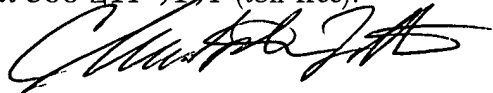
Noyes teaches using smooth surfaces to prevent the chalk from sticking to various surfaces. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to polish the interior of the combination of Fuller et al and Cooper together as taught by Noyes to make the surfaces smooth where the chalk is not intended to attach itself.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher W. Fulton whose telephone number is (571) 272-2242. The examiner can normally be reached on M-Th 5:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher W. Fulton  
Primary Examiner  
Art Unit 2859

CWF